

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

WALLACE ANTHONY GAITHER,)	
)	
Petitioner,)	
)	
v.)	1:12CV953
)	1:98CR202-1
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

On November 21, 2012, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. Petitioner filed objections [Doc. #223] to the Recommendation within the time limit prescribed by Section 636. The Court has reviewed Petitioner's objections *de novo* and finds they do not change the substance of the United States Magistrate Judge's Recommendation [Doc. #220] which is affirmed and adopted.¹

IT IS THEREFORE ORDERED that this action is dismissed *sua sponte* for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the Court of Appeals for the Fourth Circuit as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d), and that, finding no substantial issue for appeal concerning the denial of a

¹ Although Petitioner contends that he has been serving a "new sentence" since February 17, 2012, the Court's ruling on Petitioner's Motion under 18 U.S.C. § 3582(c) is not a "new sentence" that would allow an otherwise successive motion under 28 U.S.C. § 2255. See, e.g., United States v. Porter, No. 7-94cr00037-1, 2010 WL 348019 (W.D. Va. Jan. 29, 2010).

constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is DENIED.

This, the 15th day of January, 2013.



United States District Judge